

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JERALD ALAN HAMMANN,

Plaintiff,

vs.

800 IDEAS, INC.,

Defendant.

Case No. 2:08-cv-00886-LDG-GWF

**ORDER**

Motion to Limit Testimony (#136)

This matter is before the Court on Plaintiff Jerald Alan Hammann's Motion and Memorandum to Motion for Failure to Disclose (#136), filed July 12, 2010; Plaintiff's Affidavit Regarding Documents (#142), filed July 15, 2010; Defendant's Letter Opposing the Court's Consideration of Documents Plaintiff Subpoenaed from Sprint Nextel Corp. And CMS/800 (#157), filed August 6, 2010; Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Failure to Disclose (#171), filed December 17, 2010; Plaintiff's Motion for Consideration of New Evidence and Memorandum in Support of Motion (#173), filed December 17, 2010; Defendant's Memorandum of Law in Response to Plaintiff's Motion for Consideration of New Evidence (#174), filed January 3, 2011; and Plaintiff's Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion for Failure to Disclose (#175), filed January 10, 2011.

**DISCUSSION**

**1. Motion for Consideration of New Evidence (#173)**

Plaintiff requests that the Court consider business and phone records attached as exhibits to his motion for consideration of new evidence (#173) in evaluating the merits of all motions pending before the Court. It is unclear to the Court how the telephone and business records are relevant to Plaintiff's motion to preclude testimony due to Defendant's failure to disclose the

contact information of a person holding discoverable information in Defendant's initial disclosures (#136).

1 Accordingly, the Court will not consider Plaintiff's "new evidence" in deciding Plaintiff's "Motion for  
2 Failure to Disclose" (#136). The Court is aware, however, that a motion for summary judgment remains  
3 pending (#126) and the records offered by Plaintiff as new evidence may be relevant to the determination  
4 of that dispositive motion. Therefore, the Court will not issue a formal decision on Plaintiff's motion for  
5 consideration of new evidence in evaluating the merits of all motions pending before the Court (#173)  
6 other than to deny the request that the records be considered in deciding Plaintiff's "Motion for Failure to  
7 Disclose" (#136).

8 **2. Motion to Preclude Testimony (#136)**

9 In Plaintiff's present "Motion for Failure to Disclose," he argues that defense witness Susan  
10 Parker should be precluded from supplying evidence in any other capacity than as the principal director,  
11 officer and shareholder of Defendant 800 Ideas, Inc. (#136). Plaintiff alleges that Defendant's initial  
12 disclosures listed Susan Parker as a person holding discoverable information, but failed to provide her  
13 home address as required by Fed.R.Civ.P. 26. (*Id.*) Instead, Defendant listed a post office box address  
14 for Ms. Parker's contact information. (*Id.*) As a result, Plaintiff argues that he was unable to subpoena  
15 Ms. Parker in order to depose her in her personal capacity and capacity as an officer for other, potentially  
16 related companies. Defendant opposes the motion and argues that Defendant could have deposed Ms.  
17 Parker in her capacity as the principal director, officer and shareholder of Defendant 800 Ideas, Inc.  
18 (#171).

19 Plaintiff raised a similar issue in his previous motion to compel. (#79). In that motion, Plaintiff  
20 argued that the defendant should be compelled to provide further responses to his interrogatories and  
21 specifically provide him with the home address of Susan Parker so that she might be subpoenaed and  
22 deposed in her personal and professional capacity. (*Id.*) According to Plaintiff, Ms. Parker has  
23 knowledge related to Plaintiff's claims that goes beyond knowledge specific to her role as an officer of  
24 Defendant 800 Ideas, Inc. (*Id.*) The Court found that Plaintiff would have been entitled to depose Ms.  
25 Parker as her testimony may have had knowledge relevant to Plaintiff's claims or defenses raised by 800  
26 Ideas, Inc. (#168). Relevance notwithstanding, the Court denied Plaintiff's motion to compel because  
27 the discovery period had closed. (*Id.*) In addition, the Court found that Plaintiff was not prejudiced by  
28 Defendant's failure to provide Ms. Parker's address because Plaintiff could have deposed Ms. Parker in

1 her position as an officer of 800 Ideas, Inc. without the use of a subpoena. (*See id.*)

2 In the present motion to exclude, Plaintiff raises the similar argument that Susan Parker's  
3 testimony should be limited solely to her knowledge as an officer of Defendant 800 Ideas, Inc. because  
4 Defendant failed to disclose a home address for Ms. Parker as a person holding discoverable information.  
5 (#136). On further consideration, the Court finds that Susan Parker is integral to Plaintiff's claims and will  
6 allow Plaintiff to depose Ms. Parker. While the onus to notice Ms. Parker's deposition remained on  
7 Plaintiff, Plaintiff is a *pro se* litigant and entitled to some leniency. *See Hughes v. Rowe*, 449 U.S. 5, 9  
8 (1980) (stating *pro se* litigants are entitled to some leniency in procedural matters); *Haines v. Kerner*,  
9 404 U.S. 519, 520-21 (1972) (*per curiam*). In contrast to a general *pro se* party, Mr. Hammann  
10 appears to be a frequent and knowledgeable litigant. As such, Plaintiff will not be granted much latitude.  
11 In this instance, however, the Court finds good cause to grant Plaintiff an opportunity to depose Susan  
12 Parker. Accordingly,

13 **IT IS HEREBY ORDERED** that Plaintiff's motion to preclude testimony of Susan Parker  
14 (#136) is **denied** on the condition that Defendant makes Susan Parker available for deposition on or  
15 before **April 1, 2011**. Ms. Parker shall appear in San Diego County, California, Las Vegas, Nevada or a  
16 metropolitan city near her residence for deposition. Plaintiff may elect to take Ms. Parker's deposition  
17 telephonically if he wishes.

18 DATED this 8th day of February, 2011.

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21 GEORGE FOLEY, JR.  
22 United States Magistrate Judge  
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